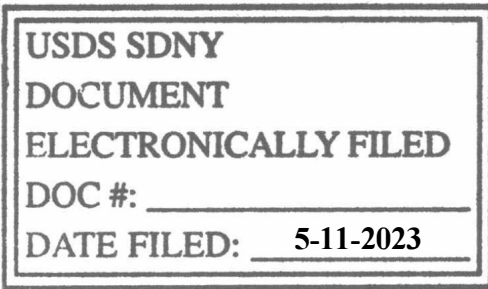


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April 27, 2023

FILED UNDER SEAL

The Honorable Lewis A. Kaplan
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Carroll v. Trump*, 22 Civ. 10016 (LAK) (“*Carroll II*”)

Dear Judge Kaplan:

We write regarding a potential issue with Juror No. 77. During *voir dire*, when asked to provide information about his background and news consumption habits, the transcript reflects that Juror No. 77 stated as follows: “31, security, live in the Bronx all my life, no kids that I know of. News basically I tend to avoid, but every now and then podcasts, *mainly independent like Temple* or some other people like that. Any questions?” Tr. at 59:23-60:1 (emphasis added). While he spoke, we followed the live transcript and similarly understood him to state that he follows a podcast called “Temple.” However, last night we became aware of several public news reports—apparently from journalists who also listened to the proceeding—that the transcript is incorrect and Juror No. 77 actually said that he receives his news from “Tim Pool.”

If so, this raises urgent concerns for us that Juror No. 77 should have been excused for cause (or should, at the very least, have faced further *voir dire*), and it potentially casts doubt on some of the answers that Juror No. 77 provided to the Court’s other *voir dire* questioning. As we explain below, Pool is a far-right podcaster notorious for attacks on women who reveal sexual assault or harassment, spreading disinformation about the 2020 election, denying the legitimacy of the 2020 election results, and coming to the defense of white supremacist groups including the Proud Boys and Oath Keepers. Moreover, Pool discussed this very case at length on his podcast and expressed scorn for Plaintiff E. Jean Carroll and her allegations. Whether or not Juror No. 77 listened to that particular episode, his potential identification of Tim Pool as the only news source he singled out by name raises substantial concern about his ability to serve fairly and impartially. Although news sources alone generally would not disqualify a potential juror, Pool is closely and relentlessly identified with spreading discriminatory and false views on topics fundamental to the *voir dire* in this case. Juror No. 77’s potential singling out of Pool by name when asked about his news sources thus raises grave concerns, analogous to if a juror identified David Duke or The Daily Stormer as among their primary news sources in a case about race discrimination.

I. Legal Standard

“A district court has the discretion to question a juror whose qualifications have been called into doubt during trial in order to resolve such matters as they arise and ensure an impartial and competent jury.” *United States v. Campbell*, 845 F.2d 782, 785 (8th Cir. 1988) (collecting cases); *see also United States v. Haynes*, 729 F.3d 178, 191-92 (2d Cir. 2013) (“Faced with a credible allegation of juror misconduct during trial, a court has an obligation to investigate and, if necessary, correct the problem.”); *Queen v. Schultz*, 310 F.R.D. 10, 24-25 (D.D.C. 2015) (Howell, J.) (“Where a juror indicates a potential basis for challenge mid-trial, the Court should voir dire the juror to ensure the impartiality of the jury.”), *aff’d*, 671 F. App’x 812 (D.C. Cir. 2016); “[T]he scope of an investigation into juror misconduct rests with the court’s discretion.” *James v. Walker*, No. 03 Misc. 0066, 2003 WL 22952861, at *6 (E.D.N.Y. Aug. 28, 2003) (Weinstein, J.), *aff’d*, 116 F. App’x 295 (2d Cir. 2004). Moreover, the Second Circuit has explained that lawyers have an obligation to “bring concerns about possible juror misconduct to the Court’s attention prior to the end of jury deliberations.” *United States v. Parse*, 789 F.3d 83, 119 (2d Cir. 2015); *see also id.* (this obligation also encompasses “concerns about possible misstatements made during voir dire”).

As articulated in criminal cases (but no less applicable here), “district courts have broad discretion to replace jurors at any time before the jury retires for deliberations.” *United States v. Bouchard*, No. 12 Cr. 381, 2014 WL 12675245, at *28 (N.D.N.Y. Feb. 10, 2014) (citing *United States v. Agramonte*, 980 F.2d 847, 850 (2d Cir. 1992) (per curiam)). To remove a juror during a trial, a court need only have “reasonable cause” to believe that the juror is unable or disqualified to serve according to her oath. *Id.* (quoting *United States v. Gambino*, 951 F.2d 498, 503 (2d Cir. 1991)). Indeed, courts have ordered further investigations into a juror’s impartiality under the far more demanding, post-trial standard where there is concern about nondisclosure during voir dire. *Cf. United States v. Colombo*, 869 F.2d 149, 151-52 (2d Cir. 1989) (remanding for evidentiary hearing when juror’s “intentional nondisclosure” prevented party from “ask[ing] follow-up questions ... to determine if there were grounds for a causal challenge”). “All that is needed to satisfy a prudent exercise of discretion is to be certain the trial court had sufficient information to make an informed decision.” *Id.* (quoting *United States v. Reese*, 33 F.3d 166, 173 (2d Cir. 1994)).

II. Pool’s Relentless Pattern of Incendiary Statements on Issues Fundamental to the Voir Dire that the Court Undertook in this Case

As stated above, Pool is notorious for misogynistic statements and opposition to women who come forward to reveal that they experienced sexual misconduct, for attacking the legitimacy of the 2020 election result, and coming to the defense of white supremacist groups. Here, we briefly summarize his own comments and other evidence confirming these points.

A. Sexism and Repeated Attacks on Women Who Reveal Misconduct

The evidence here starts with Pool’s commentary about this very case. Pool described Ms. Carroll’s allegations against Mr. Trump in at least one podcast; during that June 25, 2019 episode, which was streamed on YouTube, he described Trump’s June 2019 statements and concluded:

- “I don’t believe this story. It doesn’t mean I don’t think it should be investigated, I’m just saying we take everything with a grain of salt because

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there's money to be made in lying and pushing this narrative. The Trump bump exists; the media wants that the books will sell."

- "This woman: should we take her seriously? In my opinion, no."
- I'm sorry, when you're accusing someone of a crime 30 years after the fact I don't know what we can do for you."
- "There's too much to gain by making up a story and publishing it 23 years later."

In addition, Pool has a pattern of rejecting allegations of sexual misconduct and making clear that such allegations such be viewed with doubt and hostility. For example:

- September 12, 2018: "A few months ago, I asked, had the MeToo movement gone too far? Today, I think it's fair to say that there are several examples to say that the MeToo movement has gone too far."
- May 19, 2019: "#MeToo Backlash Keeps Getting WORSE As MORE Men Won't Work With Women."¹
- July 27, 2019: "Several More MeToo Accusations Fall FLAT, Neil Degrasse Tyson Has Won In All Investigations."²
- February 18, 2020: "Feminist Politics Has Made Dating Nearly IMPOSSIBLE"³

<https://twitter.com/Timcast/status/1258079126763769858?s=20>.



Tim Pool
@Timcast

...

I dont care about 30 year old allegations against Biden, Trump, or Kavanaugh

But you asked for these rules and then drop them in the toilet the moment it fucks up your guy?

fuck off with that shit hypocrite

1:00 PM · May 6, 2020

451 Retweets 36 Quotes 4,481 Likes 9 Bookmarks

¹ https://www.youtube.com/watch?v=P_KJ88iT4jg.

² <https://www.youtube.com/watch?v=x330OMvAyAo>.

³ <https://www.youtube.com/watch?v=6hZkblacydk>.

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<https://twitter.com/Timcast/status/1640889398265892866?s=20>.



Tim Pool ✓

@Timcast

Believe women? twitter.com/FlawdTV/status/1640889398265892866?s=20

This Tweet is unavailable.

9:31 PM · Mar 28, 2023 · 292.1K Views

558 Retweets 37 Quotes 2,859 Likes 81 Bookmarks

<https://twitter.com/Timcast/status/1621305128987885572?s=20>.



Tim Pool ✓

@Timcast

believe all women unless they go against your narrative wtf

.com

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Two women who DENIED being trafficked by Andrew Tate and his brother and insist they worked for him willingly ARE victims and have been brainwashed, Romanian judges rule

- The two women did not recognise that they were being enslaved, the court ruled
- A clinical psychologist's report said they were left traumatised and exploited

By CHRISTIAN OLIVER FOR MAILONLINE

PUBLISHED: 13:34 EST, 2 February 2023 | UPDATED: 15:56 EST, 2 February 2023

7:30 PM · Feb 2, 2023 · 2.6M Views

3,974 Retweets 348 Quotes 28.7K Likes 548 Bookmarks

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<https://twitter.com/Timcast/status/1459499031625936899>.



Tim Pool 
@Timcast

If sex work is work then can a boss require women to suck his dick as a job requirement?

7:30 AM · Nov 13, 2021

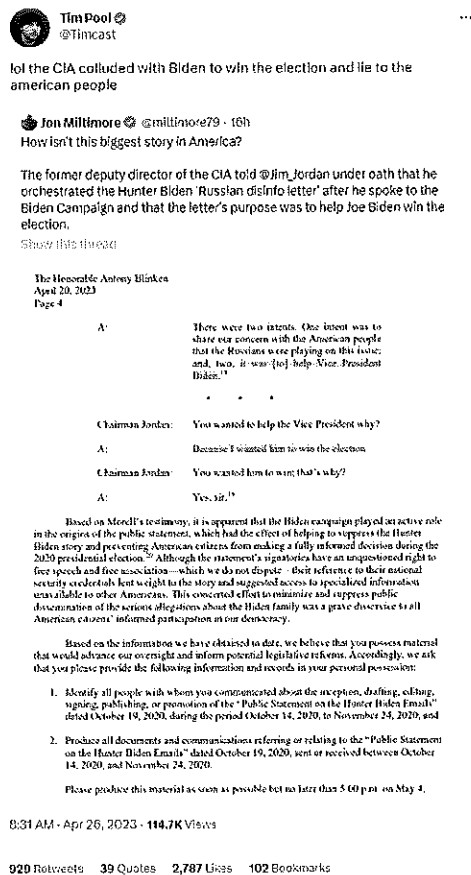
1,531 Retweets 2,939 Quotes 18.2K Likes 364 Bookmarks

B. Attacks on the 2020 Election Results

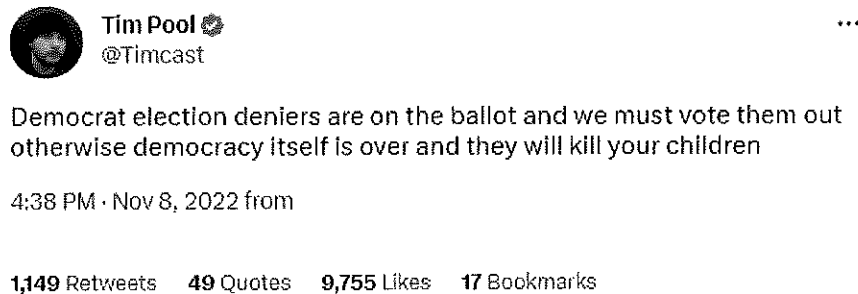
Pool has also been identified as among the major superspreaders of disinformation about the 2020 presidential election: the non-partisan Election Integrity Partnership has demonstrated that Pool one of the leading superspreaders of disinformation on Twitter.⁴ And Pool is known as one of the online personalities who pushed election disinformation before the Capitol riot.⁵ There are many examples of his commentary attacking the election; we identify two for reference:

⁴ <https://www.theguardian.com/us-news/2021/mar/05/election-misinformation-trump-rightwing-super-spreader-study>

⁵ <https://www.splcenter.org/hatewatch/2021/07/07/we-make-mistakes-twitters-embrace-extreme-far-right>.



<https://twitter.com/Timcast/status/1590096564928024576?s=20>.



C. Supporting/Defending White Supremacist Groups

As summarized by Media Matters, “many of the individuals Pool invites on his [podcast] show are extremists, bigots, or conspiracy theorists. Sometimes, they’re all three.”⁶ The New Yorker has similarly noted that Pool uses his media platform to amplify the voices of far-right

⁶ <https://www.mediamatters.org/tim-pool/extremists-bigots-and-conspiracy-theorists-youtuber-tim-pools-2022-guests-review>

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extremists while weighting their opinions “more or less equally.”⁷ As summarized by the Daily Beast in a broader profile of Pool’s role in stoking extremism in the run up to January 6:

What Pool kept secret from his younger, overwhelmingly male, decidedly right-leaning audience during this time is that he seemed to have a pretty good idea what might happen on Jan. 6.

“Dude, I’ve had messages from people saying that they’ve already got plans to rush to D.C. as soon as Nov. 3 goes chaotic,” Pool said in early September during a recorded conversation reviewed by The Daily Beast.

A few minutes later, Pool added: “The right-wing militias, the Oath Keepers, the Three Percenters, and just the Proud Boys and Trump supporters, they are going to rush full-speed to D.C. They are going to take the White House and do whatever they can and paramilitary.” (Pool made these comments to then-colleagues at the media company he started. The following month, Pool used his YouTube platform to say the Oath Keepers had been unjustly “smeared” by the Southern Poverty Law Center. He habitually comes to the defense of the Proud Boys, as well.)

Consistent with this, the Southern Poverty Law Center has described Pool as a “reactionary social media performer ... who uses his YouTube show to showcase far-right extremists such as Enrique Tarrio of the Proud Boys and the neo-Nazi collaborator Jack Posobiec.”⁸ And Pool himself has at times embraced language about an active or impending civil war in America:

⁷ <https://www.newyorker.com/magazine/2017/12/11/the-live-streamers-who-are-challenging-traditional-journalism>

⁸ <https://www.splcenter.org/hatewatch/2021/07/07/we-make-mistakes-twitters-embrace-extreme-far-right>

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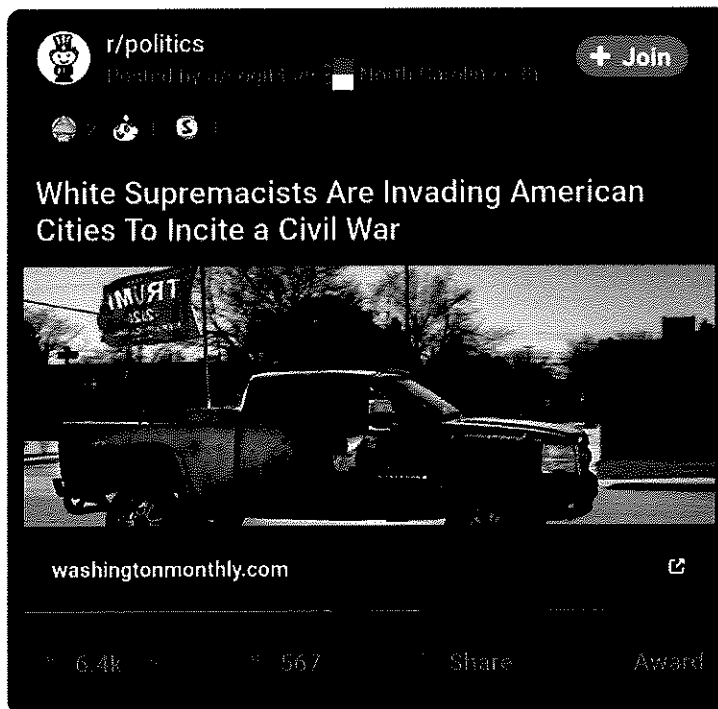


Tim Pool
@Timcast

Follow

I'm feeling a bit bullish on Civil War

The realities have diverged to a point where you can't bring them back together



4:57 PM - 30 Aug 2020

588 Retweets 4,838 Likes



D. Attacking Those Who Seek to Hold Trump Accountable

Finally, Pool frequently discusses Donald Trump on his podcast, with sharp and at times wild-eyed attacks on those who would seek to hold him accountable under the law. In the last couple months alone, Pool includes “Trump” in over a dozen podcast titles, including:

- Russian Arms Dealer WARNS Biden Admin Will Try To END Trump’s Life w/Ron Paul;
- Trump Indictment BACKFIRES, Even Liberals Say ITS BUNK AND Will FAIL w/Dave Smith;

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- Trump Jr. Calls In To Discuss Trump Indictment, Trump RAISES \$4M w/Alex Bruesewitz;
- Trump Indictment SUSPENDED, Soros DA UNABLE To Convince Jury To Indict
- New Evidence Just EXONERATED TRUMP, Democrat Witch Hunt FAIL

III. These Issues Overlap with the Court's Voir Dire Questioning

As exemplified in this letter, Pool is effectively a proxy for anti-#MeToo, 2020 election denialist, and white supremacist defending rhetoric presented as "news." In light of the Court's own voir dire questioning, there is thus substantial concern for concern if Juror No. 77 did, in fact, identify Pool as the only news source he singled out by name when asked about the issue. This is clear from the following questioning that the Court posed during voir dire (all of which Juror No. 77 answered in the negative, as to which there may now be doubt requiring further voir dire):

- "Is there anybody in the jury box who has read, seen, or heard anything about Ms. Carroll that would make it hard for you to be entirely fair to both sides in this case?" (Tr. at 14.)
- "Have you ever belonged to or considered yourself a supporter of any of the following groups: Qanon, Antifa, Jane's Revenge, Indymedia, John Brown Gun Club, Redneck Revolt, Youth Liberation Front, the Communist Party of the United States, Proud Boys, Oath Keepers, Three Percenters, Eleven Percenters, Boogaloo Boys, National Social Club, otherwise, I gather, known as NSC-131, the Ku Klux Klan, the Thin Blue Line or, Trump Supporters New York City." (Tr. at 31.)
- "Does any of you in the jury box have any opinion, one way or the other, about the MeToo movement or the slogan Hashtag Believe Women that would make it difficult for you to be fair and impartial to both sides in this case?" (Tr. at 32.)
- "Have any of you learned or heard on social media or in the news generally about any of the parties that would make it hard for you to be totally fair and impartial to both sides in this case?" (Tr. at 32-33.)
- "Raise your hand if you have read or heard, through the media or otherwise, about any allegations of sexual misconduct made against Mr. Trump or any comments he reportedly made or may have made about such allegations." (Tr. at 33.)
- "Have any of you read or heard, through the media or otherwise, about any legal cases or investigations involving Mr. Trump that would make it difficult or impossible to put that aside and decide this case fairly and impartially to both sides based solely on the evidence you see and hear in this courtroom?" (Tr. at 35.)

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- “Is there anybody who thinks that the fact that Ms. Carroll brought this lawsuit over 20 years after the alleged sexual assault which Mr. Trump denies is said to have taken place makes her less credible than she would have been if she had sued him or reported it to law enforcement more quickly?” (Tr. at 37-38.)
- “Is there anybody in the jury box or in the back of the room who believes or ever believed that the last presidential election was stolen?” (Tr. at 47.)

We therefore respectfully request that the Court undertake additional voir dire as necessary to address the concerns set forth above. And in light of the sensitive nature of the issues discussed herein, as well as the potential publicity they may attract (including from Pool himself), we respectfully request leave to file this letter under seal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Roberta A. Kaplan', with a stylized, flowing script.

Roberta A. Kaplan